U.S. Department of Labor

Office of Administrative Law Judges
603 Pilot House Drive, Suite 300
Newport News, Virginia 23606-1904

TEL (757) 873-3099
FAX (757) 873-3634

Date: September 28, 2000

Case Nos.: 2000-LHC-0400
2000-LHC-0401

OWCP Nos.: 5-106721
5-106722

In the Matter of:

PAULA A. YOUNG,
Claimant,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Employer (Self-Insured).

Appearances:

Gregory E. Camden, Esq.
For the Claimant

Christopher A. Taggi, Esq.
For the Employer

BEFORE: DANIEL A. SARNO, JR.
Administrative Law Judge

DECISION AND ORDER

This proceeding arises from a claim under the Longshore and Harbor Workers' Compensation Act ("the Act"), as amended, 33 U.S.C. §§ 901 et seq.

A hearing was held in this matter on May 15, 2000, in Newport News, Virginia. Claimant offered exhibits CX 1[1] through CX 10 and Employer offered exhibits EX 1 through EX 11, along with one joint exhibit (ALJ 1) which were admitted into evidence without objection. Claimant and Employer filed post-hearing briefs. The findings and conclusions which follow are based on a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

STIPULATIONS

Employer and Claimant have stipulated to, and I find, the following:

1. The parties are subject to the jurisdiction of the Longshore and Harbor Workers' Compensation Act.

2. An employer/employee relationship existed at all relevant times.

3. Claimant alleges an injury while working in the course and scope of her employment with Newport News Shipbuilding resulting in left carpal tunnel syndrome with a date of diagnosis of June 5, 1995.

4. Claimant alleges diagnosis of cubital tunnel of the left wrist as a result of her employment with Newport News Shipbuilding with a date of diagnosis of March 17, 1999.

5. Timely notices of the injuries were given by Claimant to Employer.

6. Timely claims for compensation were filed by Claimant for the March 17, 1999 injury.

7. Employer filed timely first reports of injury with the U.S. Department of Labor and timely Notices of Controversion.

8. Employer has not paid Claimant any disability benefits as a result of these injuries.

(ALJ 1).

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[1]The following citations will be used as citations to the record:

CX - Claimant's Exhibits
EX - Employer's Exhibits
Tr. - Transcript of hearing

ISSUE

Are Claimant's left wrist injuries work related and therefore compensable under the Act?

FINDINGS OF FACT

Paula Ann Young, Claimant, is an electrician employed by Newport News Shipbuilding and Dry Dock Company for almost 16 years (Tr. 13-14, EX 1-5).

As an electrician in the X-31 department, Claimant works on aircraft carriers, mainly doing wiring for the combat systems (Tr. 14, EX 1-5).

Claimant uses crimping and hand tools to hook up connections. She explained that a crimping tool is used by both hands to crimp connections onto the wires (Tr. 14). Claimant also uses insertion tools which are used to push wires into a connector using her hands, drills, grinders, heat guns and hydraulic crimping tools (Tr. 15-16).

On June 5, 1995, Claimant reported to the clinic with problems in both wrists, but more in her left wrist (Tr. 16-17). She was feeling pain and tingling in her wrist to her thumb (Tr. 17). Claimant was given anti-inflammatories and braces for both wrists. At that time, she was diagnosed as having carpal tunnel syndrome by Dr. Reid (Tr. 18, 25, EX 1-7).

Claimant returned to the clinic on June 26, 1995 and was continued on restrictions of "no heavy gripping, repetitive motion at wrist, use of vibratory or impact tools" (Tr. 18, EX 7-2). On July 17, 1995, Claimant was seen again at the clinic and continued on the same restrictions. Claimant did not return again to the clinic until 1998 (Tr. 18).

Between July 17, 1995 and her return to the clinic in 1998, Claimant wore braces when she had problems with her wrists. Claimant's supervisors would also assign her to do paperwork until she was feeling better. She did not need to return to the clinic because she was able to shift to duties that did not bother her wrists when needed (Tr. 18-19).

Claimant estimates she wore splints about twice a year from 1995 until 1998 for a day or two each time (Tr. 19-20).

In 1998, Claimant returned to the clinic complaining about a foot problem and was out of work from October 1998 until April 5, 1999 (Tr. 20-21).

In February of 1999, Claimant awoke one morning and her left wrist was numb. At that time, she was out of work for another work-related injury (Tr. 26). Claimant had been experiencing numbness since 1995, but in February 1999 she was unable to "shake it off" (Tr. 27-31).

On February 23, 1999, Claimant called Mrs. Caldwell in the clinic and reported that her wrist was numb (Tr. 22). Claimant was referred to Dr. Haynes who saw her on March 17, 1999. Dr. Haynes wanted to perform surgery on Claimant's arm. Claimant has not returned to Dr. Haynes since he recommended surgery (Tr. 22, EX 1-12 and 13).

Employer has not approved surgery for Claimant. Claimant says she would have surgery if it was approved (Tr. 22-23).

Currently, Claimant has problems with her pinky, ring and index fingers and thumb of her left hand. Claimant first experienced problems with her fingers on February 23, 1999 (Tr. 23). Claimant denies any type of repetitive grasping while at home with her foot injury other than using crutches (Tr. 23-24).

Testimony of Garrett Wayne Blanchette

Garrett Wayne Blanchette is an electrical supervisor at Newport News Shipbuilding and Dry Dock Company. He has been Claimant's supervisor since the spring of 1997 (Tr. 32-33).

When Claimant first started working for Mr. Blanchette, she complained of soreness in her wrist and wore a brace from time to time. Mr. Blanchette estimated he saw Claimant wearing her brace four or five times. No accommodations were made for Claimant's wrist problem. During the time Claimant worked for Mr. Blanchette, Claimant had no restrictions (Tr. 35-36).

Medical Evidence

Dr. Boyd W. Haynes, III

Claimant was referred to Dr. Boyd W. Haynes, board certified in orthopaedic surgery, by Worker's Compensation for evaluation of her left wrist on February 26, 1999. Claimant reported intermittent pain in the 4th and 5th fingers of her left hand which became constant the week prior to her referral to Dr. Haynes. Dr. Haynes diagnosed left mild cubital tunnel syndrome and felt the problem should resolve with using a pillow splint at night and taking Motrin (CX 1-3, CX 11-4 and 5).

On March 12, 1999, Claimant returned to Dr. Haynes with no improvement in her symptoms. Dr. Haynes ordered a nerve conduction velocity of both upper extremities to rule out cubital tunnel syndrome (CX 1-3, CX 11-6).

On March 31, 1999, Dr. Haynes reported that Claimant's nerve conduction velocities showed a mild cubital tunnel syndrome. Dr. Haynes told Claimant that if the condition did not improve in a month, he may recommend surgical decompression (CX 1-2, CX 11-6).

On April 28, 1999, Dr. Haynes recommended that Claimant have an anterior transposition of her ulnar nerve. Claimant agreed to the surgery (CX 1-2, CX 11-7).

Dr. Haynes noted on May 21, 1999, that Claimant was waiting for Worker's Compensation to approve her surgery. She was working at that time and experiencing more discomfort (CX 1-2).

On June 8, 1999, Dr. Haynes noted that Claimant was still waiting for approval of her cubital tunnel release and ulnar nerve transposition. Dr. Haynes felt the condition was work related (CX 1-1).[2]

Dr. Haynes explained the difference between cubital tunnel syndrome and carpal tunnel syndrome as follows:

> Cubital tunnel syndrome is a compression of the ulnar nerve which comes from a different origin in the neck and the cartilage which is also at the elbow. The carpal tunnel syndrome is from the median nerve which comes from a different origin in the neck and it's compression on the opposite side at the wrist. And they go to different positions in the hand. Carpal tunnel syndrome goes to digits 1, 2, and 3 where the cubital tunnel goes to digits 4 and 5.

(CX 11-8).

Dr. Haynes did not feel that Claimant's use of crutches could aggravate her condition because the bend of the elbow is not great enough to cause cubital tunnel syndrome (CX 11-11).

Dr. Haynes opined that cubital tunnel syndrome can come on spontaneously without a cause (CX 11-13).

Dr. Haynes stated that carpal tunnel syndrome is a pinching of the median nerve at the wrist and is usually a repetitive type injury, but it could also be from diabetes, car accidents, falls, or a number of causes. Carpal tunnel syndrome is more common in women than in men (CX 11-13 through 15).

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[2]In his deposition, Dr. Haynes explained that he changed his opinion from Claimant's cubital tunnel syndrome being work related to being non-work related because of the length of time Claimant was out of work when the symptoms began (CX 11-12).

Dr. Haynes described cubital tunnel syndrome as a pinching of the ulnar nerve at the elbow and can be caused by repetitive injury, traumatic injury or sudden onset. Cubital tunnel syndrome onset is commonly insidious and sudden onset is unusual (CX 11-15). Dr. Haynes further explained that a person who has the disease and avoids the aggravating activity can see an improvement of symptoms. A return to the activity can aggravate the condition again (CX 11-16 and 17).

By letter dated April 19, 2000, Dr. Haynes opined that Claimant's cubital tunnel syndrome cannot be related to her carpal tunnel syndrome because "these are two separate and distinct entities that do not involve the same nerve nor the same repetitive type injury pattern" (EX 11).

Dr. Anne Redding

On April 5, 1999, Dr. Haynes' medical records of Claimant were forwarded by a rehabilitation consultant for a second opinion to Dr. Anne Redding, who specializes in electrodiagnostic medicine. Dr. Redding found left neuropathy of a moderate nature, localized to the medial epicondyle (CX 2).

Dr. Lance B. Davlin

On May 20, 1999, Claimant was seen by Dr. Lance B. Davlin for a second opinion. Dr. Davlin found probable left cubital tunnel syndrome. He opined that the cubital tunnel syndrome did not appear to be work related because Claimant was out of work due to an ankle injury when the symptoms appeared. Furthermore, her symptoms in 1995 appeared distinct from her present symptoms because she did not experience numbness in her 2 ulnar fingers in 1995 (CX 3, EX 9).

Clinic Records

On June 5, 1995, Claimant was seen at the clinic for left wrist pain from using a crimping tool (CX 8-5, EX 8-1). On June 26, 1995, Claimant was seen again at the clinic and stated her wrist felt much better (CX 8-4, EX 8-2). Claimant stated that her hands were improving on July 17, 1995 during another clinic visit (CX 8-3, EX 8-3).

Clinic records indicate that Claimant was restricted from heavy gripping, repetitive motion at wrist, or use of vibratory or impact tools from June 5, 1995 to June 16, 1995, and from June 26, 1995 to August 18, 1995 (EX 7).

DISCUSSION

In order to prevail on a claim, the claimant must establish a prima facie case by showing that she suffered some harm or pain, Murphy v. SCA/Shayne Brothers, 7 B.R.B.S. 309 aff'd mem., 600 F.2d 280 (D.C. Cir. 1979), and that an accident occurred, or working conditions existed, which could have caused the harm. Kelaita v. Triple A. Mach. Shop, 13 B.R.B.S. 326 (1981). Once a claimant has established a prima facie case, she is entitled to the Section 20(a) presumption that the injury is work-related.

Once a prima facie case has been established, the burden shifts to the employer to rebut the presumption with evidence that claimant's condition was not caused or aggravated by his working conditions. 33 U.S.C. § 920(a). The employer must produce substantial evidence[3] to rebut the statutory presumption "that the claim comes within the provisions" of the Act. 33 U.S.C. § 920(a). That evidence must be "specific and comprehensive enough to sever the potential connection between the disability and the work environment." Parsons Corp. of California v. Director, OWCP, 619 F.2d 38 (9th Cir. 1980). Employer must produce facts, not speculation, to overcome the presumption of compensability, and reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created in Section 20(a). Dearing v. Director, OWCP, 27 B.R.B.S. 72(CRT) (4th Cir. 1993) (unpublished). If the administrative law judge finds that the Section 20(a) presumption is rebutted, "the presumption no longer controls," and the administrative law judge must weigh all of the evidence and resolve the causation issue based on the record as a whole. See Devine v. Atlantic Container Lines, G.I.E., 23 B.R.B.S. 279 (1990).

The record has clearly established that Claimant suffered a physical harm. On June 5, 1995, Dr. Reid diagnosed Claimant as having carpal tunnel syndrome in her left wrist from using crimping tools. She was seen at the clinic on June 26, 1995 and July 17, 1995 for follow up of her left wrist problem (CX 8-3, CX 8-4, EX 8-2, EX 8-3). Claimant was placed on work restrictions from June 5, 1995 to August 18, 1995 (EX 7). Between July 1995 and October 1998, Claimant wore a brace when she had problems with her wrist. She was not put on work restrictions during that time because she was able to shift, when needed, to duties that did not bother her wrist (Tr. 18-21). There appears to be no dispute between the parties that Claimant's carpal tunnel syndrome is work related and that she is entitled to medical treatment for this condition. Therefore, I conclude that Claimant's carpal tunnel syndrome is work related and compensable under the Act.

Claimant is also claiming another injury date of March 17, 1999, when she was diagnosed with cubital tunnel syndrome (Tr. 22, EX 1-12 and 13). Employer produces two medical opinions addressing whether Claimant's cubital tunnel syndrome is a work-related condition, in rebuttal of the Section 20(a)

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[3]Evidence will be considered substantial "if it is the kind of evidence a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971); Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951); Lockheed Shipbuilding v. Director, OWCP, 951 F.2d 1143, 1145, 25 B.R.B.S. 85, 87 (CRT) (9th Cir. 1991); Abosso v. D.C. Transit Sys., 7 B.R.B.S. 47, 50 (1977); Avignone Freres Inc. v. Cardillo, 117 F.2d 385, 386 (D.C. Cir. 1940).

presumption. Therefore, I must determine whether Claimant has shown by a preponderance of the evidence that Claimant's cubital tunnel syndrome was causally related to her work with Employer.

Dr. Haynes, Claimant's treating physician, opined that Claimant's cubital tunnel syndrome cannot be related to her carpal tunnel syndrome because these conditions do not involve the same nerve or the same repetitive type injury pattern (EX 11). Dr. Davlin also opined that Claimant's cubital tunnel syndrome was not work related because Claimant was out of work due to an ankle injury when the symptoms appeared. Additionally, her symptoms in 1995 appeared distinct from her present symptoms because she did not experience numbness in her 2 ulnar fingers in 1995 (CX 3, EX 9). With no medical evidence linking Claimant's cubital tunnel syndrome to her carpal tunnel syndrome or to a separate work-related injury, I conclude that the claim for cubital tunnel syndrome must be denied.

ORDER

It is hereby ORDERED that:

1. The Claimant is entitled to receive payment from the Employer for all past, present and future medical bills incurred from treatment, testing, and surveillance of her carpal tunnel syndrome of her left wrist, pursuant to Section 7 of the Act.

2. Claimant's request for compensation for her cubital tunnel syndrome of her left wrist is DENIED.

3. Interest at the rate specified in 28 U.S.C. § 1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits computed from the date each payment was originally due to be paid. See Grant v. Portland Stevedoring Co., 16 B.R.B.S. 267 (1984).

4. All computations are subject to verification by the District Director.

5. Counsel for Claimant shall, within thirty days of the date of this Decision and Order, submit a fully-supported petition for approval of a representative's fee. See 33 U.S.C. § 928; 20 CFR § 702.132. A copy of such petition shall be served on all parties, including Claimant. The parties shall respond with objections thereto, if any, within 20 days from the date such petition is filed.

DANIEL A. SARNO, JR.
Administrative Law Judge

DAS/JBM